

REMARKS

Claims 1, 3-13 and 15-26 are pending in this application. By this Amendment, claims 1 and 13 are amended to recite the features of former claims 2 and 14 respectively, to further distinguish over the Graf reference. Claims 2 and 14 are canceled. Claims 25 and 26 are newly added. Support for new claims 25 and 26 can be found throughout the present specification at, for example, page 17, lines 19-25.

The courtesies extended to Applicants' representative by Examiner Beaulieu at the interview held December 16, 2008, are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below, which constitute Applicants' record of the interview.*

Claims 1-4, 11-16 and 23-24 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Graf (U.S. Patent No. 6,128,564). Applicants respectfully traverse this rejection.

Claim 1

The Patent Office alleges that Graf describes all of the features of claim 1, except an upper hierarchy and a lower hierarchy and manipulation of two differing amounts. However, Graf fails to describe or provide any reason or rationale for one of ordinary skill in the art to have come to all of the features of amended claim 1 for at least the following reasons.

Amended claim 1 requires an availability calculation means for calculating availability of torque generated in the driving source and outputting the availability to the upper control hierarchy, based on a parameter from the lower control hierarchy. This feature of claim 1 assures that a torque that cannot actually be output by the power train is not

* As requested during the interview, information on the upper hierarchy can be found throughout the specification at, for example, page 6, lines 2-24, page 10, lines 25-27 and page 11, lines 6-17.

calculated and supplied to the upper level control hierarchy. Graf does not, in any way, describe this feature of claim 1.

Graf describes a drive train controller of a motor vehicle that has an engine and an automatic transmission. See the Abstract of Graf. The controller of Graf includes an engine controller for controlling variables affecting engine torque, a transmission controller for controlling shifting events and an interface that connects the transmission controller and the engine controller. However, Graf does not describe an availability calculation means for calculating availability of torque, as required by claim 1.

In this regard, Graf transmits a correction term M_{kor} , which is transmitted by the transmission controller to increase the engine torque after shifting. The M_{kor} correction term is a function of a driving situation where a power takeoff torque of the transmission after shifting is approximately equal to the power takeoff before shifting. See col. 2, lines 32-37 of Graf. In short, Graf must correct an engine's output torque after shifting in the event that the torque after shifting is equal to the torque before shifting. Thus, it is clear that Graf does not calculate an available torque in any way, and instead corrects the engine torque after a shift event has occurred.

Thus, Graf does not describe, or provide any reason or rationale for one of ordinary skill in the art to have come to, all of the features of amended claim 1.

Claim 13

Similar to claim 1, Graf does not describe an availability calculation means for calculating availability of torque generated in said driving source and outputting the availability to said upper control hierarchy, based on a parameter from said lower control hierarchy, as required by amended claim 13.

Further, Graf does not provide any reason or rationale for one of ordinary skill in the art to have come to all of the features of amended claim 13.

Withdrawal of the rejection is respectfully requested.

Claims 25-26

Claims 25 and 26 depend from claims 1 and 13 respectively. For at least their respective dependency on claims 1 and 13, and for the additional features recited therein, Graf does not render obvious claims 25 and 26.

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1, 3-13 and 15-26 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

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Date: December 29, 2008

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